

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JAMES CLAVON TROUPE, D15206,

Plaintiff,

v.

Y. FRIEDMAN, et al.,

Defendant(s).

Case No. [19-cv-01598-SK](#) (PR)

ORDER OF SERVICE

Plaintiff, a state prisoner at the Correctional Training Facility (CTF) in Soledad, California, has filed a pro se civil rights complaint under 42 U.S.C. § 1983 alleging that CTF Chaplain Y. Friedman improperly denied his request for food to celebrate the “Passover, Feast of Unleavened Bread” and that CTF Community Resource Manager A. Tamayo and Appeals Coordinator J. Truett improperly refused to correct the matter. Compl. (ECF No. 1) at 3. Plaintiff seeks damages and injunctive relief, namely to “be supplied with food for the ‘Event.’” Id.

The complaint is properly before the undersigned for preliminary screening because plaintiff has consented to the jurisdiction of a magistrate judge pursuant to 28 U.S.C. § 636(c).

DISCUSSION

A. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which relief may be granted,” or “seeks monetary relief from a defendant who is immune from such relief.” Id. § 1915A(b). Pro se pleadings must be liberally construed. Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 699 (9th Cir. 1990).

1 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) that a
2 right secured by the Constitution or laws of the United States was violated, and (2) that the alleged
3 violation was committed by a person acting under the color of state law. West v. Atkins, 487 U.S.
4 42, 48 (1988).

5 B. Legal Claims

6 Prisoners retain the protections afforded by the First Amendment, “including its directive
7 that no law shall prohibit the free exercise of religion.” O’Lone v. Estate of Shabazz, 482 U.S.
8 342, 348 (1987) (citation omitted). But incarceration “brings about the necessary withdrawal or
9 limitation of many privileges and rights, a retraction justified by the considerations underlying our
10 penal system.” Id. (citation and internal quotation marks omitted). In order for a prisoner to
11 establish a free exercise violation, he must show that a prison regulation or official burdened the
12 practice of his religion without any justification reasonably related to legitimate penological
13 interests. See Shakur v. Schriro, 514 F.3d 878, 883-84 (9th Cir. 2008).

14 Liberally construed, plaintiff’s allegations that CTF Chaplain Y. Friedman improperly
15 denied his request for food to celebrate a religious feast, and that CTF Community Resource
16 Manager A. Tamayo and Appeals Coordinator J. Truett improperly refused to correct the matter,
17 appear to state an arguably cognizable free exercise claim under § 1983 against these three
18 defendants and will be ordered served on them.

19 **CONCLUSION**

20 For the foregoing reasons and for good cause shown,

21 1. The clerk shall issue summons and the United States Marshal shall serve, without
22 prepayment of fees, (1) a copy of the operative complaint in this matter and all attachments
23 thereto, (2) a notice of assignment of prisoner case to a United States magistrate judge and
24 accompanying magistrate judge jurisdiction consent or declination to consent form (requesting
25 that each defendant consent or decline to consent within 28 days of receipt of service), and (3) a
26 copy of this order on the following defendants at CTF: Chaplain Y. Friedman, Community
27 Resource Manager A. Tamayo and Appeals Coordinator J. Truett. The clerk also shall serve a
28 copy of this order on plaintiff.

1 2. In order to expedite the resolution of this case, the court orders as follows:

2 a. No later than 90 days from the date of this order, defendants shall serve and
3 file a motion for summary judgment or other dispositive motion. A motion for summary judgment
4 must be supported by adequate factual documentation and must conform in all respects to Federal
5 Rule of Civil Procedure 56, and must include as exhibits all records and incident reports stemming
6 from the events at issue. A motion for summary judgment also must be accompanied by a Rand
7 notice so that plaintiff will have fair, timely and adequate notice of what is required of him in
8 order to oppose the motion. Woods v. Carey, 684 F.3d 934, 935 (9th Cir. 2012) (notice
9 requirement set out in Rand v. Rowland, 154 F.3d 952 (9th Cir. 1998), must be served
10 concurrently with motion for summary judgment). A motion to dismiss for failure to exhaust
11 available administrative remedies (where such a motion, rather than a motion for summary
12 judgment for failure to exhaust, is appropriate) must be accompanied by a similar notice. Stratton
13 v. Buck, 697 F.3d 1004, 1008 (9th Cir. 2012); Woods, 684 F.3d at 935 (notice requirement set out
14 in Wyatt v. Terhune, 315 F.3d 1108 (9th Cir. 2003), overruled on other grounds by Albino v.
15 Baca, 747 F.3d 1162, 1166 (9th Cir. 2014) (en banc), must be served concurrently with motion to
16 dismiss for failure to exhaust available administrative remedies).

17 If defendants are of the opinion that this case cannot be resolved by summary judgment or
18 other dispositive motion, they shall so inform the court prior to the date their motion is due. All
19 papers filed with the court shall be served promptly on plaintiff.

20 b. Plaintiff must serve and file an opposition or statement of non-opposition to
21 the dispositive motion not more than 28 days after the motion is served and filed.

22 c. Plaintiff is advised that a motion for summary judgment under Rule 56 of
23 the Federal Rules of Civil Procedure will, if granted, end your case. Rule 56 tells you what you
24 must do in order to oppose a motion for summary judgment. Generally, summary judgment must
25 be granted when there is no genuine issue of material fact – that is, if there is no real dispute about
26 any fact that would affect the result of your case, the party who asked for summary judgment is
27 entitled to judgment as a matter of law, which will end your case. When a party you are suing
28 makes a motion for summary judgment that is properly supported by declarations (or other sworn

1 testimony), you cannot simply rely on what your complaint says. Instead, you must set out
2 specific facts in declarations, depositions, answers to interrogatories, or authenticated documents,
3 as provided in [current Rule 56(c)], that contradicts the facts shown in the defendant's declarations
4 and documents and show that there is a genuine issue of material fact for trial. If you do not
5 submit your own evidence in opposition, summary judgment, if appropriate, may be entered
6 against you. If summary judgment is granted, your case will be dismissed and there will be no
7 trial. Rand v. Rowland, 154 F.3d 952, 962-63 (9th Cir. 1998) (en banc) (App. A).

8 Plaintiff also is advised that a motion to dismiss for failure to exhaust available
9 administrative remedies under 42 U.S.C. § 1997e(a) will, if granted, end your case, albeit without
10 prejudice. You must "develop a record" and present it in your opposition in order to dispute any
11 "factual record" presented by the defendants in their motion to dismiss. Wyatt v. Terhune, 315
12 F.3d 1108, 1120 n.14 (9th Cir. 2003). You have the right to present any evidence to show that you
13 did exhaust your available administrative remedies before coming to federal court. Such evidence
14 may include: (1) declarations, which are statements signed under penalty of perjury by you or
15 others who have personal knowledge of relevant matters; (2) authenticated documents –
16 documents accompanied by a declaration showing where they came from and why they are
17 authentic, or other sworn papers such as answers to interrogatories or depositions; (3) statements
18 in your complaint insofar as they were made under penalty of perjury and they show that you have
19 personal knowledge of the matters state therein. In considering a motion to dismiss for failure to
20 exhaust, the court can decide disputed issues of fact with regard to this portion of the case.
21 Stratton, 697 F.3d at 1008-09.

22 (The Rand and Wyatt/Stratton notices above do not excuse defendants' obligation to serve
23 said notices again concurrently with motions to dismiss for failure to exhaust available
24 administrative remedies and motions for summary judgment. Woods, 684 F.3d at 935.)

25 d. Defendants must serve and file a reply to an opposition not more than 14
26 days after the opposition is served and filed.

27 e. The motion shall be deemed submitted as of the date the reply is due. No
28 hearing will be held on the motion unless the court so orders at a later date.

1 3. Discovery may be taken in accordance with the Federal Rules of Civil Procedure.
2 No further court order under Federal Rule of Civil Procedure 30(a)(2) or Local Rule 16 is required
3 before the parties may conduct discovery.

4 4. All communications by plaintiff with the court must be served on defendants, or
5 defendants' counsel once counsel has been designated, by mailing a true copy of the document to
6 defendants or defendants' counsel.

7 5. It is plaintiff's responsibility to prosecute this case. Plaintiff must keep the court
8 and all parties informed of any change of address and must comply with the court's orders in a
9 timely fashion. Failure to do so may result in the dismissal of this action pursuant to Federal Rule
10 of Civil Procedure 41(b).

11 **IT IS SO ORDERED.**

12 Dated: June 27, 2019



SALLIE KIM
United States Magistrate Judge